



Center for Business  
and Human Rights



## **Break Out Session 4: Financial Sector Due Diligence**

The U.S. government aims to support the innovations of the financial services industry while promoting the rule of law, respect for human rights, and a level playing field. The government also expects companies to act in a responsible manner throughout their operations. Various international agreements such as the Equator Principles, IFC Performance Standards, OECD Guidelines for Multinational Enterprises, UN Principles for Responsible Investing, and UN Guiding Principles for Business and Human Rights, provide different frameworks to help managers develop responsible business practices and standards throughout their operations. The OECD is convening a broad stakeholder advisory group to clarify how these principles apply to the financial sector in particular. What is the U.S. government doing or could it be doing to amplify the uptake of these instruments? What are other multilateral efforts, or best practices, not captured in these instruments, upon which that NAP build? What challenges are banks and other financial service providers experiencing when conducting due diligence; can the U.S. government play a role in overcoming these barriers? How might the NAP facilitate industry efforts to standardize or otherwise improve transparency and disclosure practices; to increase banks' "leverage" in persuading clients and suppliers to act responsibly? Should we address various asset classes separately, or are there sufficient commonalities that apply to all financial actors?

**Facilitators:** Ariel Meyerstein (USCIB), Janet Shannon (USG)

**Participants:** Joann Bauer (Columbia University), Larry Beeferman (HLS), Alex Feldman (Clifford Chance US LLP), Nicole Karlebach (Yahoo!), Anjali Nanda (ABA Center for Human Rights), Nikki Reisch (NYU Law School), Eryn Schornick (Sorini, Samet & Associates LLC), Val Smith (CITI), Morton Winston (Center for the Study of Social Justice)

**Rapporteurs:** Peter Leahey, Morgan White

**Overview:** The financial services sector breakout discussion was attended by representatives from academia, government and private industry. There was a general sense that the topic is vast in that virtually all money in the economy can be traced back to a bank in some form or fashion. Thus several participants urged that the NAP needs to be very focused, and to prioritize the areas in the financial sector where it can have the greatest impact. With that in mind, participants discussed the following topics:

## **Financial Sector Reform**

Several participants suggested the NAP should look at the financial services sector not just as enablers of human rights violations by client companies, but also should focus on human rights challenges in the practices of the financial services industries themselves. To the extent possible, these participants felt that the NAP should attempt to address issues such as risky mortgage lending practices and speculative derivative trading as a means to better control or regulate the more potentially risky or damaging of these activities. Among the ways the government might address these challenges would be to increase funding of regulatory bodies (like the U.S. Commodity Futures Trading Commission) or increasing transparency reporting by financial service firms.

## **Transparency/Reporting**

There was considerable emphasis on the importance of reporting. Several participants highlighted the State Department's Reporting Requirements for Responsible Investing in Burma as one potential model of success. Transparency and reporting should both be goals of the NAP, but at the same time any new reporting requirements should balance the burden of mandating additional reporting with recognizing the burdens already imposed on companies by existing requirements. Some participants suggested that any new reporting requirements proposed by the NAP could also serve as a source of information to NGOs who could then evaluate the performance of various financial institutions independently. Some argued that increased reporting standards need not be viewed only as burdensome, but rather they may also give financial institutions an opportunity to showcase their successes.

## **Industry Participation and Incentives**

Several participants urged that RBC is an area where financial firms can work collaboratively, rather than competitively, and work to develop concrete, clearly defined joint approaches. Some noted the work of the informal "Thun Group" comprised of banks in the U.S. who already met to discuss best practices and industry-wide solutions. In that spirit, the NAP could support convening meetings to discuss and disseminate best practices and facilitate industry-wide policies and practices. The NAP should also look at ways to incentivize adherence and adoption to human rights standards by highlighting and rewarding best practices and illustrating the competitive advantage that adherence offers financial institutions over others that struggle with RBC standards. This holds particularly true in an era when investors are increasingly concerned about conflicts of interest and reputational capital.

## **Performance Index**

A civil society participant noted examples of civil society efforts to rank brands on indices (e.g., Oxfam's "Behind the Brands" campaign) that could be applied to financial institutions. The NAP could build on the success of these and others by creating a baseline standard that incorporates the RBC principles into an industry "scorecard" or performance metric.

Regardless of what measures are implemented, there was consensus that any guidance from the NAP needs to be accessible, with clearly defined steps for participants. Many financial institutions are global and already struggle with implementing and regulating internal policy across multiple countries and cultures. The NAP would benefit from understanding this reality, and prioritizing the steps that can have the biggest impact first rather than trying to address issues from every possible angle.